Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3, 1002-1017
2025
Publisher: Learning Gate
DOI: 10.55214/25768484.v9i3.5408

The role of arbitration in the resolution of commercial contract disputes under Saudi Law

Abdullah Mushkus Almutairi[1*]
[1]Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia; Abdullah.Almuteri@nbu.edu.sa (A.M.A.).

Abstract: The study examined arbitration as an alternative method of resolving disputes arising from commercial contracts entered into by commercial enterprises for financial gain. The study focused on arbitration as a mechanism to resolve commercial contract disputes. The author adopted a doctrinal approach based on interpreting laws, regulations, and international treaties, and analyzing relevant studies. The collected data for this research appears in a literature study, namely a review of library materials related to the research subject. The study concluded that arbitration is less critical than the judiciary and is not an absolute alternative to it, at least at present. This is due to many disadvantages, mainly because many procedures necessary to achieve justice in court are not followed in arbitration. The study recommended that the law of arbitration explicitly stipulates the arbitrator's immunity against civil liability for anything he does or omits in complete confidence in his capability as an arbitrator.

Keywords: *Arbitration, Commercial contracts, Disputes, Law of Arbitration, Resolution, Saudi Law.*

1. Introduction

The judiciary has the inherent competence and jurisdiction to hear and decide all disputes that arise between parties in a legal relationship, whether legal persons or individuals, according to constitutional rules that determine the separation of powers and the laws regulating the judiciary's activity as a manifestation of state sovereignty. However, laws in different countries and international treaties regulate alternative dispute resolution methods. One of the most famous and essential methods nowadays is arbitration. Arbitration is essentially based on an ongoing dispute or disagreement between parties or one expected to occur in the future, which is referred or may be referred, by special agreement between them, to one or more individuals to make a final decision regarding it Carlston [1]. It is outside the court procedure in which a neutral third party, called the arbitrator, hears the evidence, and makes a binding decision [2]. According to the Saudi Center for Commercial Arbitration:

"Arbitration is a private, consensual, flexible decision-making process for resolving business disputes in a binding and enforceable manner. In arbitration, parties agree to submit their dispute, whether in the form of the "Arbitration Clause" or "Submission to Arbitration," to an independent and impartial decision-maker (arbitrator) appointed by mutual consent or statutory provision. Arbitrators hear evidence and arguments and issue final and binding decisions (" Award")".

Commercial companies and individuals use arbitration as a legal alternative to resolve disputes arising from commercial contracts. According to researchers, Arbitration is gaining importance in solving disputes due to its ability to resolve disputes quickly without prolonging procedures, compared to traditional litigation or judiciary [3]. Arbitration is usually conducted flexibly, unlike litigation before the courts. Modern laws give disputing parties the right to determine and organize the arbitration tribunal's procedures. However, these laws specify some mandatory rules that must be

History: Received: 7 January 2025; Revised: 21 February 2025; Accepted: 24 February 2025; Published: 13 March 2025
* Correspondence: Abdullah.Almuteri@nbu.edu.sa

applied in arbitration, such as the rules of fair hearings, equal treatment right, and request revocation right. According to the Law of Arbitration, the disputing sides have the right to select the arbitration procedures stipulated in a model law or international agreement, the arbitrators, the arbitrator's response procedures, the language of arbitration, the place of arbitration, and the law that can be used to the subject of the dispute. Although this flexibility does not exist in litigation before the courts, the judge must follow what the law stipulates, even if that makes achieving justice difficult [3].

On the other hand, arbitration guarantees the confidentiality of the dispute file, especially in commercial cases. The entire subject of the dispute and all arbitration procedures, evidence, hearing sessions, documents, and arbitration decisions are not disclosed to others but remain exclusively in the hands of the arbitrators, unlike litigation before the courts, governed by the principle of publicity of sessions. It is recognized that this advantage of confidentiality makes the arbitration process attractive to disputing parties who wish to protect their trade secrets [3]. This is in addition to the implementation of the arbitration in countries other than the place of arbitration, especially in commercial arbitration, and the finality of these awards. At the same time, the current Laws of Arbitration are not subject to resumption, unlike court awards [3]. Also, it reassures the parties involved in the dispute about the decision that will be issued later. It allows them to choose arbitrators freely, which helps avoid hostility and grudges between the parties. By resolving the dispute and ending the conflict while preserving the financial and commercial relationships between them, arbitration also offers elements of expertise in the subject matter of the dispute, which may involve technical aspects that judges may not fully understand [3]. Finally, arbitration is essential in promoting and encouraging the appropriate environment for investment in the Kingdom of Saudi Arabia. It has made significant efforts to take decisive steps towards modernizing arbitration to align with the latest global trends [4].

The research aims to clarify the role of arbitration as a private system of justice in settling disputes between commercial companies and individuals arising from commercial contracts concluded between them within the framework of the exercise of commercial activities of companies and individuals to achieve financial gain. Thus, the research problem is presented in the central question: To what extent does arbitration contribute to resolving commercial contract disputes? How have the laws and regulations in the Kingdom of Saudi Arabia addressed arbitration in commercial contract disputes? This involves addressing the rules related to the arbitration agreement and conditions, the arbitration panel, the procedural system for arbitration, the decision on the arbitration case, and the end of the arbitration. Then, the author evaluates the arbitration process.

2. Literature Review

Arbitration is widely used to settle various fields, including commercial contract disputes. Therefore, the author has addressed it more precisely, focusing on commercial contracts, considering that arbitration is a means of resolving disputes. Al Amri [5] made three suggestions related to arbitration: the first is to codify the rules of Islamic jurisprudence in legal articles so that judicial awards do not differ among themselves on the same subject. The second suggestion is to adopt a system of judicial precedents to solve the problem of inconsistent judicial decisions by limiting the judge's discretionary power in assessing penalties, which reduces the disparity in penalties in identical or similar cases. This will also provide a rich source of awards for judges and lawyers. The third suggestion is forming an arbitration panel outside the judicial system to reassure investors, companies, and banks about their investments in the country. However, all these suggestions are subject to consideration. As for the first suggestion, Islamic jurisprudence regarding arbitration because the principle gives freedom to the parties to choose the legal relationship that applicable to the dispute, and it differs according to the legal systems followed. In addition, arbitration is currently based on legal rules with similar and global dimensions. Regarding the second suggestion, there is no scope for applying penalties concerning arbitration. This is because the predominant general goal of arbitration is to settle disputes between parties, not to impose fines. As for the last suggestion, it is a foregone conclusion; the arbitration philosophy is essentially based on forming a panel outside the judicial

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

system, which is the proposed one. In addition to these studies, Alrajaan [6] added that the Kingdom of Saudi Arabia's approach to international arbitration, after the arbitration of the famous Aramco case in 1963, led to the reputation of being an unfriendly arbitration state. However, the Law of Arbitration of 1983 addressed this to some extent. Nevertheless, arbitration under the 1983 Law remained dependent on the approval of national courts. Besides the little scope for judicial intervention, the legal framework undermined the final and binding nature of the ruling, restricted the parties' independence, and created ineffective delays. In 2012, the Law of Arbitration 2012 was passed to replace the 1983 Law with a legal framework to satisfy international commercial parties' needs. The study posed a question: whether the Law of Arbitration of 2012 succeeded in establishing a legal framework and foundations with the three fundamental principles that require the foundations of international trade orientation, which are the independence of the judiciary, procedural justice, and the effectiveness of success. The study concluded that the Law of Arbitration of 2012 is essential, as it provides a legal framework for constructing orientation, encourages pro-wise ideas, and achieves the difference between the three fundamental principles that meet the international innovative elements. Kryvoi [7] recommended some relevant suggestions that the researchers agree with. These suggestions include conducting court procedures related to arbitration time-efficiently, allowing the application of foreign law without obstacles, strengthening, and expanding the group of arbitrators with appropriate skills and experience, training judges and law practitioners on international arbitration, and stipulating the immunity of arbitrators in law.

3. Methodology

The researchers adopted a doctrinal approach based on interpreting laws, regulations, and international treaties and analyzing relevant studies. This research collected data through a literature study, namely a review of library materials related to the research subject.

3.1. Organizational Development of Arbitration

On 24/5/1433 AH, Royal Decree No. (M/34) issued the current Law of Arbitration, replacing the Law of Arbitration issued in 1403 AH2. Article 2 stipulates that it applies to all types of arbitration, including disputes related to commercial contracts. On 13/11/1440 AH, Royal Decree No. (M/128) issued the current Government Tenders and Procurement Law. Article 92/2 stipulates that the government agency, with the approval of the Minister of Finance, may agree to arbitration by the regulations.

On the other hand, commercial arbitration rules first appeared in the Kingdom of Saudi Arabia with the Commercial Law (Commercial Court Law) issuance by Royal Order No. 32 dated 15/1/1350 AH. The law stipulated the rules for conducting arbitration in commercial disputes in Articles (493-497), (538), (599), and (610-613). However, Royal Decree No. Canceled these rules. (M/1) issued on 22/1/1435 AH. New amendments were subsequently introduced to Commercial Law No. 666 of 1948, which granted chambers of commerce the power of arbitration to settle commercial disputes at the parties' request. It also amended the law issued in 1981, which permitted arbitration if both parties agreed to it, whether the party was local or foreign [5].

The Law of Arbitration was issued on 12/7/1403 AH and applied to commercial disputes, including commercial contract disputes. However, this law was abolished by the current Law of Arbitration, which regulates the settlement of commercial contract disputes based on the parties' agreement.

4. Arbitration Rules of Commercial Contracts

The Law of Arbitration and its executive regulations stipulate general commercial contract arbitration provisions. These provisions include rules related to the agreement, conditions, arbitral tribunal, procedural system for arbitration, decision on the arbitration case, and termination of the arbitration.

Edelweiss Applied Science and Technology
ISSN: 2576-8484
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4.1. Arbitration Agreement

The commercial contract parties refer to the dispute of arbitration through a special agreement concluded for this purpose. This arbitration agreement is the basis for resorting to arbitration and the source of the arbitral tribunal's authority, removing the dispute from the jurisdiction of the judiciary. If there is no agreement regarding arbitration, the authority to decide the dispute rests with the judiciary, which is the general principle.

The arbitration agreement takes three forms: arbitration clause, arbitration stipulation, and arbitration by referral.

4.2. Arbitration Clause

The arbitration clause is the first form of an arbitration agreement, signifying the agreement between the parties to a commercial contract that any dispute arising between them regarding a specific legal relationship will be resolved through arbitration [8]. This is also called a continuous arbitration contract [9]. This agreement was established before the dispute arose and may be dependent on or included within the original contract between the parties. Article 9/1 of the Law of Arbitration outlines the arbitration clause, stating, "The arbitration contract may precede the dispute, whether it is independent or part of a specific contract." Additionally, Article 1 specifies that the arbitration agreement should be an arbitration clause within the contract.

On the other hand, the contracting parties may briefly stipulate the arbitration clause in the contract, such as: "Any dispute regarding the contract shall be referred to arbitration." They may add phrases that ensure a more straightforward interpretation of the contract in favor of arbitration, such as: "Any dispute or disagreement regarding this contract of any kind or related to it in any way, including disputes over its interpretation, implementation, or expiration, and any claims arising from it, shall be settled by resorting to arbitration." The contracting parties may add provisions relating to the place and language of arbitration, the law applicable to the dispute, the number of arbitrators, their qualities, and qualifications [10].

A form of the institutional arbitration clause7 is the Saudi Center for Commercial Arbitration model, which stipulates that:

"Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled through arbitration and administered by the Saudi Center for Commercial Arbitration by its arbitration rules." Institutional arbitrations are based on the agreement of the parties to the contractual relationship that the dispute between them shall be settled through arbitration by a permanent arbitration center or a permanent national or foreign arbitration organization. The arbitration shall be conducted in accordance with the Center's system and procedures, and the Center may appoint the arbitration tribunal, or one of the arbitrators according to the will of the parties, or review the ruling issued in the arbitration case [8].

The UNCITRAL Model Law on International Commercial Arbitration states that:

"All disputes, controversies, or claims arising out of or relating to this contract or its breach, termination, or invalidity shall be settled by arbitration by the UNCITRAL Rules of Arbitration." The International Chamber of Commerce in Paris model states that":

"All disputes arising from this contract or anything related to it shall be finally settled by the arbitration rules of the International Chamber of Commerce by one or more arbitrators appointed by that system" [8].

However, even if the arbitration clause is included in the original contract, it is considered a condition independent of it. Article 21 of the Law of Arbitration stipulates that:

"The arbitration clause contained in a contract is considered an independent agreement from the other contract terms."

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The independence between the arbitration clause and the contract it contains is evident in their differences in subject matter and cause. The arbitration clause pertains to resolving potential disputes that may arise in the future, while the contract itself addresses other issues specific to the type of contract. The purpose of the arbitration clause is for both parties to agree not to bring any disputes arising from the contract to the courts [11].

The principle of independence between the arbitration clause and the contract has several significant effects, which are as follows [8]:

The contract's invalidation, avoidance, or termination does not invalidate the arbitration clause. Article 21 of the Law of Arbitration stipulates:

"The invalidity, avoidance, or termination of the contract, which includes the arbitration clause, does not invalidate the arbitration clause it contains if the clause is valid in itself ".

However, some jurists believe that the arbitration agreement, although not affected by the invalidity of the original contract, is influenced by the fate of this contract in it lack. The lack of the original contract results in the absence of an arbitration agreement, and this opinion was supported by the French Court of Cassation in its ruling issued in 1990 [12].

The arbitration tribunal is competent to decide on requests for frustration, annulment, avoidance, or termination of the original contract by what is stipulated in the arbitration clause in the contract. This is because the arbitration tribunal derives its competence from the arbitration clause, which is independent of the contract that is the subject of the dispute.

The expiration of the original contract through execution does not result in the expiration of the arbitration clause as long as it stipulates that any disputes related to the contract must be resolved through arbitration.

The original contract may be governed by the law of the judge's state or by the law determined based on conflict of laws and rules in the judge's state. At the same time, the arbitration agreement may be subject to a different law as per the parties' agreement or the decision of the competent judge.

Accordingly, the arbitration clause is based on the agreement of the parties to the contractual relationship to arbitrate any disputes that may arise between them in the future regarding the contract without resorting to the official judicial system of the state or any other form of litigation.

4.2.1. Referral Arbitration Clause

This clause is based on the fact that the original contract between the parties does not stipulate an arbitration clause but merely refers to a document that includes the arbitration clause. This document may be an agreement between the parties, a document issued by one of them or another person, a model contract, or the regulations of an arbitration center. The referral here is considered an agreement on the arbitration clause [8]. Article 9/3 of the Law of Arbitration stipulates the condition of arbitration by referral:

"A reference in a contract, or a referral therein to a document containing an arbitration condition, is considered an arbitration agreement. Also, every referral in the contract to the provisions of a model contract is considered an arbitration agreement. International agreement, or any other document containing an arbitration clause if the referral is clear in considering this clause as part of the contract."

The arbitration clause by reference is also stipulated in the UNCITRAL Model Law on International Commercial Arbitration with 2006 amendments in Article 7/6, which states that:

"The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.".

For the arbitration clause to have its effect when referred to, it is required that the document explicitly include the arbitration clause known to the party adhering to the clause, or at least widely known among the economic activities to which the parties belong, and that the referral is to the specific arbitration clause contained in the document. The document must be clear, and the arbitration clause

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ISSN: 2576-8484
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must be enforceable. However, if the referral is general or the arbitration clause is not enforceable, it is not considered valid [8].

4.2.2. Arbitration Submission Agreement

Suppose the parties to the contractual relationship agree upon the arbitration clause before any dispute arises regarding the contract. In that case, the arbitration submission agreement is included in a separate contract after the dispute arises. It is an individual arbitration contract [9] or a private arbitration document [8]. The arbitration submission agreement is an agreement between two parties to a contract to settle a dispute through arbitration after it arises [8]. The first article of the Law of Arbitration referred to the arbitration submission agreement as:

"An arbitration agreement may be in the form of an arbitration clause in a contract or a separate arbitration agreement."

The arbitration agreement should specify the issues subject to arbitration as long as they are after the dispute; otherwise, the deal that includes them will be invalid. (Art. 9 (1) of the Law of Arbitration). The arbitration submission agreement is valid even if the dispute has been the subject of a lawsuit filed before the competent court. (Art. 9 (1) of the Law of Arbitration).

5. Conditions of the Arbitration Agreement

The arbitration agreement includes general conditions applicable to arbitration in commercial contracts.

5.1. General Conditions

The general conditions of the arbitration agreement include the availability of the contract elements within the agreement, the eligibility of the agreement to arbitrate, the validity of the right that is the subject of the dispute for arbitration and its determination, and the written form of the arbitration agreement.

5.1.1. Elements of the Arbitration Agreement

An arbitration agreement, like any other contract, must contain the elements necessary for its conclusion: consent, subject matter, and cause. Consent in the contract is achieved by the agreement of the wills of two or more contracting parties, who can contract and express this will in a way that indicates it, verbally, in writing, by an understood sign, or by giving—and it may be explicit or implicit unless the statutory, agreement, or nature of the transaction stipulate otherwise. (Art. 33 of the Civil Transactions Law). However, the arbitration agreement is a formal legal transaction that can only be concluded in writing; otherwise, it is invalid. (Art. 9 (2) of the Civil Transactions Law)

Consent between the parties to the commercial contract is achieved through an offer and acceptance by one of them expressing the desire to choose arbitration to resolve the dispute existing between them or which may occur in the future and the other party's acceptance of this offer.

The expression of will must be correct. The will must be issued by a person with legal capacity, meaning that the will is expressed by a person with legal capacity who is not incapacitated or lacking capacity according to the Art. 32,47 of the Civil Transactions Law, and that the will must be free from defects that may affect it, such as a fundamental error in the subject matter, the character of the subject matter and contracting party, or the award, or otherwise, and deception, coercion, and exploitation. The other party, whose will be affected by any of these defects, may request the invalidation of the contract by specific restrictions for each defect. (Arts. 57, 61, 64, 68, 69 of the Civil Transactions Law).

On the other hand, the arbitration agreement, like any other contract, must have a subject matter, which is the existing or potential dispute between the parties to the commercial contract, and the dispute must be related to a specific legal relationship. This is because arbitration is an exceptional litigation resolution limited to the subject of the controversy that was agreed upon. Moreover, specifying the subject matter of arbitration leads to restricting the competence of the arbitration

Edelweiss Applied Science and Technology
ISSN: 2576-8484
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tribunal to that subject matter; otherwise, the award issued by it will be invalid. Therefore, it is not permissible to agree on arbitration regarding all legal relationships between the parties [8] but instead regarding the specific legal relationship between them. The first Article 1 of the Law of Arbitration refers to this by stipulating that the arbitration agreement is concluded between two or more parties, provided that they refer to arbitration all or some specific disputes that have arisen or may arise between them regarding a specific legal relationship, whether contractual or non-contractual, whether the arbitration agreement is in the form of an arbitration clause contained in a contract or in the form of an arbitration submission agreement.

The subject matter of the arbitration agreement must be possible, meaning it can be settled by arbitration. Article Two of the Law of Arbitration stipulates that dispute related to family matters and matters where reconciliation is not permissible cannot be arbitrated. Additionally, it is also required that the subject matter of the arbitration agreement not be contrary to public order. For example, an agreement to arbitrate a dispute related to the supply of drugs would be void. The subject must also be specific or capable of being specified. If these conditions are not met, the arbitration agreement will be void. (Art. 72 of the Civil Transactions Law).

In addition to consent and subject matter, the arbitration agreement must have a cause; it is the motive for the contract, and the cause of the arbitration agreement is the parties' will to exclude submitting the dispute to the judiciary and granting competence to an independent arbitration tribunal [13]. It is required that the cause of the arbitration agreement, like any other contract, be legitimate. The reason is illegitimate if it involves fraud against the law, such as if the intention of resorting to arbitration was to evade the provisions of the law that are applicable if the dispute is presented to the judiciary.

The arbitration agreement shall be invalid if the cause of it is unlawful, whether stated in the contract or indicated by the circumstances of the contract. (Art. 75 of the Civil Transactions Law). If the cause is not mentioned in the arbitration agreement, it is assumed to have a legitimate reason unless there is evidence to the contrary. (Art. 76 of the Civil Transactions Law)

5.1.2. Eligibility to Agree to Arbitration

As a general rule, the parties to a contract must have full legal capacity to achieve its intended legal effects; otherwise, it is void. Article 10/1 of the Law of Arbitration stipulates that:

"An arbitration agreement may only be concluded by a person having the legal capacity to dispose of his rights, whether such person is corporate or he, or his designee, is natural."

It is clear that the capacity required to conclude an arbitration agreement is the capacity to dispose of the rights subject to arbitration. This is because resorting to arbitration involves waiving litigation before the state's courts, and this waiver would endanger rights [8]. It is not permissible to conclude an arbitration agreement except by someone with the right to sacrifice some rights.

Accordingly, the principal natural person or agent who has the right to dispose of his rights and who, after concluding the arbitration agreement, is a person with full legal capacity who has reached the age of majority, eighteen Hijri years, enjoys his mental faculties and has not been under interdiction for any legal reason. (Art. 12 of the Civil Transactions Law). For this reason, Art. 13/1 of the Civil Transactions Law noticed that it is not permissible for an incapacitated person - who is a person who lacks discernment due to young age or insanity, or an incomplete person, who is a young person who has reached the age of discernment but has not reached the age of majority, or an insane person who is lacking in reason and has not reached the point of insanity and who is prohibited due to his foolishness or negligence, to conclude an arbitration agreement. Otherwise, it is invalid and has no legal effect. They do not have the right to enter into a legal, contractual relationship under the law in applying the general principle stipulated in Article 47 of the Civil Transactions Law: that every person is qualified to act unless incapacitated or incompletely under the law.

Regarding a legal person's capacity to enter into an arbitration agreement, confirming that he possesses a legal personality is essential. Legal personality grants the Legal person the rights that an

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

individual has, except those inherent to natural persons, such as entering into an arbitration agreement. However, the capacity of a legal person is limited to the purpose for which it was established and the activities it is authorized to engage in, as determined by those with the authority to manage their assets [8]. Thus, the arbitration agreement is invalid unless the person who concluded it, whether natural or legal, has the right to dispose of his rights guaranteed to him by law.

5.1.3. The Validity of the Disputed Right to Arbitration and Its Determination

It is required in the arbitration agreement that the right in dispute be eligible for arbitration, and this is the meaning of the condition in the subject matter of the arbitration agreement that it is possible in itself. That is, it can be decided by arbitration. Therefore, the right is not the subject of the dispute if the law explicitly or implicitly prohibits arbitration. In this regard, Article Two of the Law of Arbitration stipulates that its provisions do not apply to disputes related to personal matters or matters in which reconciliation is not permissible.

On the other hand, the right that is the subject of the dispute settled through arbitration should be specific because it clarifies the scope of the issues being arbitrated and the limits of the arbitral tribunal's authority regarding them [13]. Article 9/1 of the Law of Arbitration regarding determining the subject of the dispute in the arbitration agreement stipulates that "the arbitration agreement may also be concluded after the occurrence of a dispute, even if such dispute was the subject of an action before the competent court. In such a case, the agreement shall determine the issues in the arbitration; otherwise, the agreement shall be void." Article 72 of the Civil Transactions Law also stipulates that the subject matter of the contract must be specific in itself, in type and quantity, or capable of being specified in the future; otherwise, the agreement is invalid.

Determining the subject of the dispute referred to arbitration requires clearly drafting the arbitration agreement. So that there is no doubt about the scope defined by the parties. This is because a slight difference in wording may lead to a significant difference in application, such as the wording of any dispute "arising under the contract" and the wording of any dispute "arising from the contract" [13].

For the subject matter to be eligible for arbitration, the arbitration agreement must also be valid to establish an arbitration case that leads to the issuance of an effective arbitration award. Therefore, the arbitration agreement is invalid unless it is concluded between two parties who are fit to have the qualities of plaintiff and defendant necessary for the arbitration claim. If the dispute subject to arbitration involves multiple parties that need to be represented, then the arbitration agreement is not valid except with their participation [8].

5.1.4. Arbitration Agreement Writing

An arbitration agreement is a formal contract that must be concluded in writing. This includes agreements in the form of an arbitration clause, an arbitration clause by referral, or an arbitration submission agreement. (Art. 2/9 of the Civil Transactions Law) Failure to meet this requirement renders the contract invalid. Additionally, if an ordinary person does not easily understand the written agreement, it may also be deemed invalid.

Writing in the arbitration agreement is required to prevent secondary disputes over its existence or content [8] and to emphasize the parties' desire to submit their dispute to arbitration instead of litigation before the courts [8].

Writing is not only a necessary condition for the validity of the arbitration agreement but also for the validity of the subsequent amendment to the agreement, whether regarding the subject of the dispute, the duration of the arbitration, the authority of the arbitration panel, the procedures to be followed, or the law applicable to the procedures or the subject matter of the dispute [8].

The arbitration agreement shall be written by the provisions of Article 9/3 of the Law of Arbitration if it is contained in a document issued by the contracting parties, in documented correspondence exchanged between them, in telegrams, or other electronic or written means of

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ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
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communication. It is considered an arbitration agreement to refer in the contract to a document containing an arbitration condition, or if the reference in the contract is to the provisions of a model contract, an international agreement, or another document, if the referral is clear that the condition is part of the contract concluded between the parties. In the same sense, the New York Convention of 1958 regarding the recognition and enforcement of foreign arbitral awards stipulates in Article 2/2 that the term "written arbitration agreement" means any arbitration clause contained in a contract, any arbitration agreement signed by both parties or any arbitration agreement contained in letters or telegrams exchanged between the parties. Article 154/3 of the Executive Regulations of the Government Tenders and Procurement Law also stipulates that the arbitration agreement must be in writing and specify arbitration and its conditions in the contract documents.

6. Arbitration Panel

Arbitration is essentially based on the parties in a legal relationship choosing a specific body to decide the dispute that may arise between them in the future, known as the arbitration panel. The researchers will discuss how this body is formed and selected, as well as the independence and impartiality of the arbitrators, respectively.

6.1. Formation and Selection of the Arbitration Panel

The arbitration panel shall be formed at the will of the parties by an individual arbitrator or a team of arbitrators, provided that the number is equal. Otherwise, the arbitration shall be invalid. (Arts. 13 and 38 of the Law of Arbitration). This is to avoid a tie in votes when issuing a decision in an arbitration case or in any issue whose resolution requires taking votes in the event that the number of members of the arbitration panel is even.

The court with the original jurisdiction to decide the dispute for which arbitration was agreed upon shall select the individual arbitrator if the parties do not agree on his selection. However, if the arbitration panel consists of three arbitrators, each party shall choose an arbitrator on its behalf, provided that the two arbitrators shall select the third arbitrator. If the two arbitrators do not agree on choosing the third arbitrator within fifteen days following the appointment of the last arbitrator from them, or if one of the parties does not appoint the arbitrator on his behalf within five days, ten days following receipt of the request to do so from the other party, the court shall choose the third arbitrator within fifteen days of submitting the request who is interested in expediting. (Arts. 15/1 and 38 of the Law of Arbitration)

The arbitrator shall be chaired by the arbitrator chosen by the two appointed arbitrators or by the court if the tribunal is composed of more than three arbitrators. (Arts. 15/1 and 38 of the Law of Arbitration).

The candidate for membership on the arbitration panel must be fully qualified, meaning they have reached the age of majority (18 years in the Hijri calendar), possess mental strength, have not been detained for any legal reasons, exhibit exemplary conduct, and hold at least a university degree in legal or legal sciences. However, if the panel consists of three or more arbitrators, it is sufficient for the chairperson to meet the qualification requirement. (Arts. 14 and 38 of the Law of Arbitration). When selecting an arbitrator, the court must consider the conditions agreed upon by the parties and other requirements specified in the Law of Arbitration. The court should issue the decision to choose an arbitrator within thirty days of receiving the request, (Arts. 14 and 38 of the Law of Arbitration) and this decision is not subject to appeal challenging independence. (Arts. 15/4 and 38 of the Law of Arbitration)

On the other hand, if the two parties do not agree on the procedures for choosing the arbitration panel, if one of them violates these procedures, or if the two appointed arbitrators do not agree on a matter that they should have decided upon, or if the third party fails to perform what was entrusted to him in this regard, the court, upon a request from the party concerned with expediting, shall carry out

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
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the required procedure or work, unless the agreement stipulates another way to complete the procedure or work. (Arts. 15/2 and 38 of the Law of Arbitration)

6.2. Independence and Impartiality of Arbitrators

The arbitrator is subject to the same procedural safeguards associated with the principles of independence and impartiality as in litigation in general. The arbitrator is prohibited from considering and hearing cases in which a judge is also banned, even if the parties to the arbitration do not request it. The arbitrator should be independent in his rulings, considering the arbitration case presented before him, free from any external influence on the soundness of the rulings he issues. There should be no authority over the arbitrator in his rulings except the provisions of Islamic Sharia and the applicable laws. (Arts. One of the judicial Law)

The arbitrator should also be impartial; the case should be decided without bias in favor of one of the parties, influenced by personal interests and emotions. The Law of Arbitration stipulates that the arbitrator should not have an interest in the dispute that is the subject of the case, and he must inform the parties to the arbitration process in writing, from his appointment and throughout the arbitration proceedings, of all circumstances that raise doubts about his independence and impartiality. (Arts. 16/1 and 38 of the Law of Arbitration)

One of the most important manifestations of the independence and impartiality of the arbitrator is that each party is empowered to withdraw from consideration of the arbitration case if they are not satisfied with his ruling without bias or inclination. The principle is that the arbitration parties agree on the procedures to respond to the arbitrator. However, suppose there is no agreement in this regard. In that case, the request for dismissal shall be submitted in writing to the arbitration panel, including the reasons for the response, within five days from the date the applicant learns of the formation of the panel or of the circumstances that justify the response.

In this case, i.e., submitting a challenge request, either the requested arbitrator must step down or not step down. If he does not step down or the other party does not agree to the challenge request within five days of its submission, the arbitration panel must decide on the request within fifteen days of the date of its receipt. If his request is rejected, the person requesting a response may submit it to the court with original jurisdiction to decide on the dispute that was agreed to be arbitrated within thirty days, and the court's ruling is not subject to appeal. (Arts. 16/3 and 38 of the Law of Arbitration)

For the arbitrator to be dismissed, conditions must arise that raise serious doubts about his independence or impartiality, or that he does not possess the qualifications agreed upon by the parties. The dismissal request must be submitted before the closing of pleading; otherwise, it will not be accepted. (Art. 5/2 of the executive regulations of the Law of Arbitration). The request must not be submitted by someone who has previously requested the dismissal of the same arbitrator in the same arbitration for the same reasons. (Art. 17/2 of the Law of Arbitration). Furthermore, the person who chose the arbitrator or participated in his appointment may not request his dismissal except for reasons that became clear after the arbitrator's appointment. (Art. 16/4 of the Law of Arbitration).

Submitting a request to dismiss the arbitrator before the arbitral tribunal will result in stopping the arbitration proceedings until an alternative arbitrator is appointed. If the arbitration tribunal or the court rules to dismiss the arbitrator from hearing the case, the arbitration proceedings, including the award, shall be considered as if they did not exist. (Arts. 17/4 of the Law of Arbitration and Article 6 of the Executive Regulations of the Law of Arbitration)

There is no doubt that the stipulation in the Law of Arbitration, which grants the arbitrator immunity from civil liability for actions taken in good faith in their capacity as an arbitrator, enables them to perform their duties without fear of prosecution.

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

6.3. Procedural System of Arbitration

Researchers explain the procedural system of arbitration by specifying the procedures that are followed in arbitration, applying the rule of equality between parties in the arbitration process, stating the claim and defense, and determining the place and language of arbitration.

6.4. Determining Arbitration Procedures

To decide the case, the arbitration panel shall follow the procedures agreed upon by the arbitration parties, including the procedures of the rules applied in any organization, body, or arbitration center inside the Kingdom, such as the Saudi Center for Commercial Arbitration, or outside it, provided that these procedures do not violate Islamic Sharia. However, if there is no agreement, the arbitration panel may choose the appropriate methods, taking into account what Islamic Sharia and the arbitration system require, (Art. 25/1/2 of the Law of Arbitration) and it must notify the arbitrators at least ten days before implementing these procedures. (Art. 8 of Law of the Executive Regulations of the Law of Arbitration)

Arbitration procedures begin on the day one party receives the other party's request for arbitration unless there is an agreement stipulating otherwise. (Art. 26 of the Law of Arbitration). In the case of multiple arbitration parties, procedures begin when the last party receives the request for arbitration. (Art. 11 of the Executive Regulations of the Law of Arbitration).

The arbitration request must include specific data stipulated in Article 9 of the Executive Regulations of the Law of Arbitration, which are:

1. The applicant's name for arbitration, the name of his representative, if any, their profession, nationality, domicile, address, and means of communication. 2: The name of the other arbitration party. 3: A brief statement of the contractual relationship, the arbitration agreement, the subject of the dispute, its facts, and the circumstances that led to submitting the arbitration request. 4: A summary that includes the requests of the arbitration applicant. 5: A proposal to appoint an arbitrator if the arbitration panel is not named and the arbitrator is one, or a notification of the arbitrator's appointment chosen by the arbitration applicant if the panel consists of three or more.

6.4.1. Applying the Rule of Equality Between Arbitration Parties

The principle of equality is a fundamental rule in arbitration that aims to protect the rights of all parties involved in the proceedings. It ensures that each party has equal opportunities to present their arguments, submit evidence, and be treated fairly by the arbitral tribunal. The tribunal must not show favoritism towards any party and must give both parties a chance to present their case and respond to the claims made against them. If one party can present evidence, the other party must also be given the same opportunity. This principle is essential for maintaining a fair and impartial arbitration process [14]. Article 27 of the Law of Arbitration stipulates "the principle of equality between arbitration parties." "The two parties to the arbitration shall be treated equally, allowing each party a full and equal opportunity to present his case or defense."

6.4.2. Statement of Claim and Defense

The principle in litigation is that the plaintiff presents his case first, and the defendant presents his defenses to confront the claim second. This is what Article 30 of the Law of Arbitration stipulates. The plaintiff in the arbitration case must send a written statement of what he claims to the defendant and each arbitrator within the agreed-upon time between the two parties or as determined by the arbitration panel. The statement should include the plaintiff's name and address, the name and address of the defendant, an explanation of the facts of the case, his requests, and arguments. Everything required by the arbitration parties' agreement must be mentioned in the statement. In return, the defendant should send a written answer with his defense to the plaintiff and each arbitrator in accordance with the statement of claim within the agreed-upon time between the two parties or as determined by the arbitration panel. The defendant may include the answer to all requests related to the subject matter of

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

the dispute or assert a right arising from it to dismiss the claim. He also has the right to invoke this right at a subsequent stage of the proceedings whenever the arbitral tribunal deems that the circumstances of the delay are justified.

On the other hand, the arbitration panel must terminate the arbitration if the plaintiff does not submit the written statement of the claim without an acceptable excuse, provided that this procedure does not result in the termination of the arbitration agreement unless the parties agree otherwise. The arbitration panel must also continue the proceedings if the defendant does not submit a written answer in his defense unless the parties agree otherwise. (Art. 34 of the Law of Arbitration and Article 15 of the Executive Regulations of the Law of Arbitration)

To achieve the principle of confrontation in litigation between adversaries, a copy of the memoranda, documents, or other papers submitted by one party to the other party is sent to both parties, and a copy of the expert reports, documents, and other evidence submitted to the arbitration panel is sent to both parties. (Art. 31 of the Law of Arbitration).

Each of the parties to the arbitration has the right to amend the requests or defenses he has submitted or to supplement what is lacking in them in the application of the rule that final requests matter and the principle of ensuring the right of defense for the parties, unless the arbitral tribunal decides not to accept the amendment to avoid delaying the decision of the case. (Art. 32 of the Law of Arbitration).

6.4.3. Place of Arbitration

The location of the arbitration is of particular importance as it is where the final ruling is issued, and the competent court determines specific arbitration issues in addition to being qualified to appeal the verdict and its implementation. The law must be applied to the dispute [8, 10].

In principle, the place of arbitration is determined by the parties' agreement, but this does not mean that the arbitration is held only in this place. It is permissible to have arbitration in any location. This is why a distinction is made between the physical place of arbitration and the seat of arbitration. The place of arbitration is a geographical location, and arbitration sessions may be held elsewhere by agreement of the parties. As for the seat of arbitration, it is a legal necessary effect [8]. Article 28 of the Law of Arbitration regarding the place of arbitration stipulates that: "the two parties to arbitration may agree on the venue of arbitration within the Kingdom or abroad. In the absence of such an agreement, the venue of arbitration shall be determined by the arbitration tribunal, taking into consideration the circumstances of the case, including the convenience of the venue to both parties. This shall not prejudice the power of the arbitration tribunal to convene at any venue it deems appropriate for deliberation; hearing of witnesses, experts, or the parties to the dispute; inspection of the subject matter of the dispute; or examination of documents or review thereof."

6.4.4. Language of Arbitration

Determining the language to be used in arbitration is necessary, especially if the arbitration has an international nature. Arbitration can be burdensome for the parties if it is conducted in a language they do not understand, making it difficult to prove the claim as [10]. Article 29 of the Law of Arbitration stipulates that:

"Arbitration shall be conducted in Arabic unless the arbitration tribunal or the two parties to arbitration agree on another language or languages. Such agreement or decision shall apply to the language of the written statements and notes, oral arguments, and any decision, message, or award made by the arbitration tribunal, unless otherwise agreed upon by both parties and decided by the arbitration tribunal."

It is clear that there is more flexibility for the parties, as they can choose the arbitration panel and the language to be used in arbitration, in contrast to the Law of Civil Procedure, which stipulates in Article 23 that Arabic is the official language of all courts. The courts can hear statements from

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

opponents, witnesses, and others who do not speak Arabic through a translator, as long as a certified translation is provided by an office licensed in Arabic for documents written in a foreign language.

7. Deciding the Arbitration Case

Deciding an arbitration case requires specifying the law applicable to the dispute that is the subject of arbitration and stating the foundations and deadline for issuing a ruling in the arbitration case.

7.1. Applicable Law to the Subject of Arbitration

Arbitration is based on the principle of the freedom of the parties to the legal relationship to choose the law applicable to the existing dispute or that may arise between them in the future. Therefore, the Law of Arbitration was keen to confirm this principle by stipulating in Article 38/1/A/B that the arbitration panel shall apply the rules that it agrees upon. Unless they agree otherwise, the parties must agree on the subject matter of the dispute subject to arbitration and the substantive rules in a given country. If there is no agreement on the rules that apply to the subject matter of the dispute, the arbitration panel shall apply the substantive rules in the law that it deems most closely related to the subject matter of the dispute.

On the other hand, the arbitration panel must take into consideration the terms of the disputed contract when deciding the case and consider the current customs regarding the type of transaction, the customs followed, and the dealings between the two parties. (Arts. 38/C of the Law of Arbitration).

The arbitration panel may decide the dispute in accordance with the rules of justice and fairness if the arbitration parties explicitly agree to delegate it to reconciliation. (Art. 38/2 of the Law of Arbitration).

The arbitration panel must also consider the provisions of Islamic Sharia and public order in the Kingdom when examining the dispute to determine the applicable law to the subject of the arbitration.

7.2. Basis and Deadline for Issuing the Arbitration Award

7.2.1. Basis for Issuing an Arbitration Award

The arbitral tribunal's award shall be issued by a majority of the members' opinions after conducting a confidential deliberation among them if the tribunal is composed of more than one arbitrator. The authority may choose a likely arbitrator within fifteen days of its decision not to obtain the majority required to issue the award in the event that the members' opinions differ, and it is not possible to obtain a majority. Otherwise, the court with the original jurisdiction to decide on the dispute in which it was agreed to arbitrate will be appointed by the likely arbitrator. (Art. 39/1/2 of the Law of Arbitration). On the other hand, an award on procedural matters may be issued by the president of the tribunal and not by all other members if the two parties to the arbitration declare this in writing or based on the permission of all members of the arbitration tribunal, unless the two parties to the arbitration agree otherwise. (Art. 38/3 of the Law of Arbitration).

However, the award must be issued unanimously if the arbitration panel is authorized to conciliate. (Art. 38/4 of the Law of Arbitration). The arbitration panel may issue a temporary award before issuing the final award to end the dispute or on part of the submitted requests, unless the two parties to the arbitration agree otherwise. (Art. 38/5 of the Law of Arbitration).

7.2.2. Date of Issuing Award

The arbitration panel shall issue the award in the arbitration dispute within the time limit agreed upon between the parties to the arbitration process. However, if there is no agreement in this regard, the award must be issued within twelve months from the date of the start of the arbitration proceedings. (Art. 40/1 of Law of Arbitration). The period specified for the ruling shall be extended to thirty days if an arbitrator is appointed in place of another arbitrator. (Art. 40/4 of Law of Arbitration).

The arbitration panel may extend the period for issuing the award, provided that it does not exceed six months, unless the two parties to the arbitration agree on a longer period. If the award is not issued

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

within this period, the parties may request the court with original jurisdiction to decide on the dispute that was agreed to be arbitrated by issuing an order. By specifying an additional period or ending the arbitration procedures, either party may then file a lawsuit with the court that has the original jurisdiction to decide the dispute that was agreed to be arbitrated. (Art. 40/3 of Law of Arbitration).

7.3. End of Arbitration

Arbitration procedures in commercial contracts conclude with the issuance of award ends the dispute. The arbitration panel may also issue an award to terminate the arbitration procedures in certain cases, such as when both parties agree to end the arbitration or if the defendant requests to continue the procedures. The arbitration panel may decide to continue the procedures if it deems it necessary to resolve the dispute. The procedures may also end if the plaintiff fails to submit a written statement of his claim without a valid excuse, (Art. 41 of Law of Arbitration) and if one of the arbitration parties dies or loses his legal capacity by agreement with whoever has standing in the dispute with the other party. (Art. 42/2 of the Law of Arbitration).

7.4. Evaluation of Arbitration as a Means of Resolving Commercial Contract Disputes

Arbitration has gained significant importance in the Kingdom of Saudi Arabia and has witnessed remarkable development in recent years .The development is still ongoing after the issuance of the current Law of Arbitration of 2012 and the new Enforcement Law, in addition to increased support from the judiciary and the efforts of the Saudi Center for Commercial Arbitration in adjudicating commercial disputes. The Law of Arbitration included many provisions derived from the UNCITRAL Model Law, as previously stated, in terms of the independence of the parties in the main areas of applicable law, the rules governing the dispute, the place and language of arbitration, the representation of the parties, and the appointment of the arbitral tribunal. The parties may appoint any arbitrator, mediator, lawyer, expert ,or other representative, regardless of gender, nationality ,or religion. The law also grants protection to arbitration decisions and limits any appeals thereto to a limited number of reasons, including the principles of Islamic Sharia, without reviewing the merits. The new Enforcement Law sought to address concerns about inconsistent implementation of judicial awards. Regarding increasing support from the judiciary ,it currently enforces national and international laws and foreign arbitration awards continuously. The Saudi Center for Commercial Arbitration has played a significant role in adjudicating many commercial cases. Between October 2016 and 2021, the center received two hundred internal and external cases [15].

8. Conclusion

The researchers have concluded the principal results and made some recommendations. Despite the development of arbitration in recent years in Saudi law and the justifications mentioned by researchers, arbitration is less critical than the judiciary. It is not an absolute alternative to it, at least at present. This is due to many disadvantages and others, namely, in arbitration, ineffective process design and poor cooperation can impact time and cost. Confidentiality may not always be appropriate in certain situations. If the arbitration is binding, the outcome could be uncertain. There is a limited right of appeal in arbitral proceedings. Additional costs may be incurred by the arbitrators. The arbitration can be binding or advisory [16]. In addition, arbitrators are not required to follow the law and occasionally (or frequently) do not. Parties use arbitration as a way to avoid the application of mandatory legal rules. Arbitration keeps cases out of the public court system, preventing courts from creating new laws. In all these respects, arbitration is conceivable to be "lawless." Arbitrators may occasionally disregard the law, and some parties likely use arbitration to bypass legally required processes. Due to arbitration being used to resolve cases, courts are not issuing as many precedents [17].

On the other hand, legal systems currently rely on the judiciary as the main body in the state for adjudicating various disputes, according to the special qualifications of judges and the clear procedures

Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408

followed to achieve justice between opponents. For example, the principle of publicity of sessions leads to the satisfaction of justice among the public. In addition to the cost-free nature litigation in Saudi Arabia compared to arbitration. It is impossible to abandon the role of the courts if arbitration is adopted as a method of resolving disputes alongside the courts; the courts may intervene in many arbitration procedures. The judiciary is also characterized by its impartiality as a general rule, unlike the arbitrator, who may be biased towards one of the parties. This is why arbitration involves what can be called the tug of justice between the arbitrators, where each arbitrator is biased towards the party he has chosen. The possibility of judicial awards being subject to appeal and cassation enables the parties concerned to re-file their cases before a higher court. Also, the judiciary system represents the natural development of arbitration. Men have used arbitration for settling disputes, adjusting differences, and resolving conflicts long before laws were created, courts were constituted, or judges developed legal principles [18].

In general, many of the procedures necessary to achieve justice in court are not followed in arbitration. However, procedures are admittedly essentially the stronghold and foundation of justice and freedom.

Funding:
The authors extend their appreciation to the Deanship of Scientific Research at Northern Border University, Arar, KSA, for funding this research work through the project number "NBU-FFR-2025-3238-01.".

Transparency:
The author confirms that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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Edelweiss Applied Science and Technology
ISSN: 2576-8484
Vol. 9, No. 3: 1002-1017, 2024
DOI: 10.55214/25768484.v9i3.5408